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December 9, 1927.

Arizona State Highway Department,
Phoenix, Arizona.

Gentlemen:

Attention: Mr. Whitworth

As requested by your Mr. Snedden in a conversation with the writer on the 8th inst., we hand you herewith our opinion supplementing our opinion of November 30, 1927, as to what should be required by your department before issuing a Certificate of registration of title to a repossessed car.

In our opinion of November 30th, we stated "That the applicant should be required to file the instrument or writing under which he claims the right to repossess the car". By this we do not mean that the applicant should be required to file the original copy, or even a certified copy issued by the County Recorder. In most cases it would be impossible to file the original contract because it has been recorded and is in the possession of the County Recorder. To require a copy certified by the County Recorder would cause an unnecessary expense. A copy of the contract accompanied by an affidavit under oath that the copy is a true and correct copy of the contract under which the automobile was sold and that said contract is of record in the County Recorder's office of the particular county is sufficient to meet the requirements of the Highway Code and to protect your office in issuing a Certificate of registration of title, if the proper steps were taken in repossessing the car.

The Uniform Conditional Sales Act, Ch. 40 Laws of 1919, Section 17, provides that not more than forty or less than twenty days prior to the retaking, the seller may if he so desires, give notice of intention to retake. If this notice is given and the purchaser does not perform the obligations of his contract, he loses the right of redemption. The seller, may, however, repossess the car without giving such notice, in which event the purchaser, under Section 18, of the Uniform Conditional Sales Act, has the right to redeem at any time within ten days. If the purchaser does not redeem

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within ten days, the seller may resell the automobile in accordance with provisions of Sections 19 and 20 of the Uniform Conditional Sales Act, or may retain the automobile as his own property without obligation to account to the buyer, except actual damages which might result to the buyer. The provisions of the Conditional Sales Act in respect to the resale of property are not mandatory, that is, the seller is not compelled to resell the car in order to acquire title, even though fifty per cent or more of the purchase price may have been paid. The failure to resell merely relieves the purchaser of his obligations under the contract and gives him a right to recover for actual damages. This, however, in no way effects the seller's title to the car, and the right to have a Certificate of registration of title issued. If the right to repossess exists and the seller has exercised this right and retained the property for ten days without the purchaser redeeming the same, the seller is entitled to have a Certificate of registration of title issued.

We have prepared and are enclosing herewith a rough outline of the affidavit to accompany the copy of the contract which we believe sufficient to meet the requirements of the Highway Code.

Very truly yours,

STRUCKMEYER JENNINGS & STROUSS

By

Enc. 1.
CLS:M